

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 12, 2019
From: Amber Hollister, General Counsel
Re: Appeal & Review of CSF Claim No. 2018-78 Deveny (Thompson)
Appeal & Review of CSF Claim No. 2019-7 Deveny (Thompson)

Action Requested

Review the Client Security Fund Committee recommendation that the board grant claimant Jerry Thompson's claim in the matter of CSF Claim No. 2018-78 Deveny (Thompson) and reimburse him for \$33,333.33, and that the board grant claimant Thompson's claim in the matter of CSF Claim No. 2019-7 Deveny (Thompson) and reimburse him for \$6,666.67.

Also consider claimant's appeal of the Committee's decision to deduct 33% of claimant's loss based on a contingent fee agreement. Claimant asserts that the deduction is inappropriate because the settlements were fraudulent and obtained without his knowledge, and he is unsure if he executed a written contingent fee agreement in both cases.

Discussion

In 2014, claimant Jerry Thompson hired Ms. Deveny to represent him in a personal injury case for injuries sustained in a motor vehicle accident on August 28, 2014. He stated in his Application that he agreed to pay Ms. Deveny 35% of any subsequent recovery, but he does not have a copy of a contingent fee agreement.

Ms. Deveny settled the case in 2016 without Mr. Thompson's knowledge. On July 14, 2016, Ms. Deveny submitted a signed release signed by Jerry Thompson, in which he agreed to settle his claim for \$10,000. The signature appears to be forged. Ms. Deveny endorsed the check as "trustee of Jerry Thompson" and converted the funds. She never told Mr. Thompson about the settlement.

In April 2017, Mr. Thompson hired Ms. Deveny to represent him in a second personal injury case for injuries sustained in a motor vehicle accident on March 31, 2017. Mr. Thompson stated in his Application that he agreed to pay Ms. Deveny 35% of any subsequent recovery, but he did not have a copy of the agreement. Thompson's counsel notes that no written fee agreement was discovered in Ms. Deveny's file, and states that claimant is unsure if an agreement was ever signed.

Ms. Deveny settled the second MVA case in February 2018. On February 23, 2018, a release was executed releasing Allstate from liability in return for a \$50,000 settlement. The signature appears to be forged. On February 26, 2018, Allstate sent a check for \$50,000 in settlement of Mr. Thompson's claim for injuries sustained on March 31, 2017. The check was

endorsed by Ms. Deveny “as trustee of Jerry Thompson.” She converted the funds and never told Mr. Thompson about the settlement.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending.

After a review of the facts presented, the Committee found that there was evidence of dishonesty in both cases, and that dishonesty caused Mr. Thompson a loss of his settlement funds. At its March 2018 meeting, the Committee reviewed Mr. Thompson’s claims and unanimously voted to recommend that the Board reimburse him in CSF Claim No. 2018-78 Deveny (Thompson) for \$33,333.33, and reimburse him for CSF Claim No. 2019-7 Deveny (Thompson) for \$6,666.67. In total, the Committee recommended that the board authorize reimbursement of \$40,000.

Mr. Thompson’s claims would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Mr. Thompson has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon his circumstances and the available evidence.

Appeal

Claimant’s counsel Stephen Arnot has appealed the recommended amount awarded by the Committee. He submits that his client should receive the maximum CSF reimbursement of \$50,000, because the settlements made by Ms. Deveny were fraudulently obtained without his client’s knowledge or consent. Further, he asserts that his client is unsure of whether he ever signed a fee agreement in the second case.

During its March meeting, the Committee discussed this issue and determined that it did not have any evidence to suggest Mr. Thompson’s claims should have been settled for a greater amount. The Committee discussed the fact that because no written contingent fee agreement is available, the underlying fee agreement may be voidable under Oregon law, and given Ms. Deveny’s dishonest behavior she may not have been entitled to any amount in fees under a *quantum meruit* theory. Despite this, the Committee decided that under CSF Rule 2.2, the Fund may only reimburse claimants for legal fees if the legal services performed were minimal or insignificant. The Committee did not reach that conclusion in this instance. After consideration and discussion, the Committee determined that based on the information it had available, deducting the 1/3 contingent fee would likely place Mr. Thompson in the same position he would have otherwise been without Ms. Deveny’s fraudulent taking of his settlement funds.

Staff recommends that the board approve the claim, consistent with the CSF Committee’s recommendation that the claimant receive a reimbursement of \$40,000 for both claims.